

1 ERIC P. ISRAEL (State Bar No. 132426)
eisrael@DanningGill.com
2 SONIA SINGH (State Bar No. 311080)
ssingh@DanningGill.com
3 DANNING, GILL, ISRAEL & KRASNOFF, LLP
1901 Avenue of the Stars, Suite 450
4 Los Angeles, California 90067-6006
Telephone: (310) 277-0077
5 Facsimile: (310) 277-5735
6 Attorneys for Brad D. Krasnoff, Chapter 7 Trustee

FILED & ENTERED

MAR 17 2020

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY tatum DEPUTY CLERK

7 **CHANGES MADE BY COURT**

8 **UNITED STATES BANKRUPTCY COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **LOS ANGELES DIVISION**

11 In re	Case No. 2:19-bk-13181-RK
12 SERAPIO VENEGAS,	Chapter 7
13 Debtor.	ORDER DENYING MOTION OF ALLIANCE UNITED INSURANCE COMPANY TO DISMISS BANKRUPTCY CASE
14	Date: March 10, 2020
15	Time: 2:30 p.m.
16	Place: Courtroom 1675
17	255 E. Temple Street
18	Los Angeles, California 90012

19 On March 10, 2020, at 2:30 p.m., there came before the Court for hearing the “Cross-
20 Motion” to Dismiss Involuntary Bankruptcy Case (*docket nos. 53, 54 and 55*) (the “Motion to
21 Dismiss”) filed by Alliance United Insurance Company (“Alliance United”) on or about February
22 11, 2020. Eric P. Israel and Sonia Singh of Danning, Gill, Israel & Krasnoff, LLP appeared for
23 Brad D. Krasnoff, the Chapter 7 trustee (the “Trustee”) for the estate of Serapio Venegas. Robert J.
24 Pfister of KTBS Law LLP and Theona Zhordania of Sheppard, Mullin, Richter & Hampton LLP
25 appeared for Alliance United. Steven M. Schuetze of Shernoff Bidart Echeverria LLP appeared as
26 the Trustee’s special litigation counsel. No other appearances were made.

27 The Court having read and considered the Motion to Dismiss, the Trustee’s opposition to
28 the Motion to Dismiss (*docket no. 65*), and Alliance United’s reply in support of the Motion to

1 Dismiss (*docket no. 69*), having issued a tentative ruling denying the Motion to Dismiss (copy
2 attached hereto), and after consideration of oral arguments at the hearing with good cause
3 appearing, for the reasons stated on the record at the hearing and in the tentative ruling, it is

4 ORDERED THAT:

5 1. The Motion to Dismiss is denied in its entirety.
6 2. Alliance United lacks standing to bring the Motion to Dismiss, and the requisite
7 cause is not shown under 11 U.S.C. § 707(a).

8

9 #####

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Date: March 17, 2020



Robert Kwan
United States Bankruptcy Judge

1

2 TENTATIVE RULING FOR HEARING ON MARCH 10, 2020

3

4 Revised tentative ruling as of 3/9/20. Deny "cross"-motion of Movant Alliance United
5 Insurance Company to dismiss bankruptcy case for lack of standing for reasons stated in
6 the trustee's opposition. Movant must have standing to bring motion to dismiss Chapter 7
7 bankruptcy case under 11 U.S.C. 707(a), In re Sherman, 491 F.3d 948, 957-958 (9th Cir.
8 2007). Despite movant's "structural" objection, it must show that it has Article III
9 constitutional standing to challenge the bankruptcy case, that is, whether it alleges an
10 injury fairly traceable to the wrongful conduct, and that it has prudential standing as a
11 person aggrieved by the bankruptcy court's order, see In re P.R.T.C., Inc., 177 F.3d 774,
12 777 (9th Cir. 1999); In re Chiu, 266 B.R. 743, 748-750 (9th Cir. BAP 2001), and it has not
13 so shown that it is a creditor or other party in interest that meets the constitutional and
14 prudential standing requirements. Movant's only demonstrable interest affected by the
15 pendency of the bankruptcy case is as a party defendant in the trustee's action against it,
16 now the removed state court action, which does not make it an aggrieved person by the
17 pending of the bankruptcy case. Matter of Fondiller, 707 F.2d 441, 442-443 (9th Cir.
18 1983). The court also agrees with the trustee that cause is not shown under 11 U.S.C.
19 707(a) for dismissal since dismissal would be prejudicial to Creditor Wood, the largest
20 creditor, and the estate, that the contingency fee of special litigation counsel is not cause
21 for dismissal (i.e., since there is only one contingency fee of 40%) and dismissal would be
22 prejudicial to the administrative claimants. Whether the concerns of the courts in In re
23 Murray, 543 B.R. 494 (Bankr. S.D.N.Y. 2016), aff'd, 900 F.3d 53 (2nd Cir. 2018) are
24 applicable here are debatable, and in any event, as out of circuit authority, Murray is not
controlling here. Murray is distinguishable at least because the party seeking dismissal
was a party in interest with standing unlike here. It does not seem to the court an
improper bankruptcy purpose for the major creditor of the estate who was grievously
injured by the debtor to bring the involuntary bankruptcy petition against debtor to pursue
rights that debtor may have against the insurance company for an alleged bad faith failure
to timely accept a settlement offer adversary proceeding where the debtor has refused to
pursue or assign those rights to the aggrieved creditor to constitute cause for dismissal
under 11 U.S.C. 707(a) since the involuntary bankruptcy case was brought to protect an
asset of debtor's estate which would be otherwise lost. See In re Manhattan Industries,
Inc., 224 B.R. 195, 200 (Bankr. M.D. Fla. 1997)(“The central policy behind involuntary
petitions was to protect the threatened depletion of assets or to prevent the unequal
treatment of similarly situated creditors.”), cited and quoted in In re Marciano, 446 B.R.
407, 419 (Bankr. C.D. Cal. 2010). Whether movant as the insurer acted in bad faith with
respect to debtor remains to be determined as such claim is being vigorously defended by
movant. Appearances are required on 3/10/20, but counsel may appear by telephone.

25

26

27

28